

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
Implementation of Section 621(a)(1) of)	
the Cable Communications Policy Act of 1984)	MB Docket No. 05-
311		
as amended by the Cable Television Consumer)	
Protection and Competition Act of 1992)	

COMMENTS OF CITY OF GREEN SPRING, KENTUCKY

These Comments are filed by the City of Green Spring, Kentucky in support of the comments filed by the National Association of Telecommunications Officers and Advisors ("NATOA"). Like NATOA, the City of Green Spring, Kentucky believes that local governments can issue an appropriate local franchise for new entrants into the video services field on a timely basis, just as they have for established cable services providers. In support of this belief, we wish to inform the Commission about the facts of video franchising in our community.

Cable Franchising in Our Community

Community Information

The City of Green Spring, Kentucky ("City") has a population of 750 residents. Our franchised cable provider is Insight Communications.

Our Current Franchise

Our current franchise began in 1995 and expires on December 31, 2011. Under the statutory timeline laid out in the Federal Cable Act, the cable operator has a 6-month window beginning 36 months before the expiration of the franchise in which to request a renewal under the Federal Act. As a result, at this time we are not currently negotiating a franchise renewal with the incumbent provider.

Section 39 of our franchise requires the cable operator to pay a franchise fee to the City in the amount of 3% of the cable operator's revenues. The revenues for franchise fee purposes are calculated based on the gross revenues of the operator, in accordance with the Federal Cable Act. However, pursuant to HB 272, as of January 1, 2006, the local cable franchising authorities in Kentucky no longer

receive cable franchise fees. Instead, the Commonwealth of Kentucky imposes a 3% excise tax on multichannel video programming service. The tax is billed to subscribers and collected by providers. Additionally, the Commonwealth of Kentucky imposes a tax of 2.4% on gross revenues from multichannel video programming services and a tax of 1.3% on gross revenues from communication services. According to HB 272, local cable franchising authorities will be "held harmless" by the state for the amount of cable franchise fee revenue they have historically collected.

We require the cable operator to provide the following capacity for public, educational, and/or governmental ("PEG") access channels on the cable system. Section 46(1) of the City's franchise states:

Operator shall make available sufficient channel capacity and the necessary electronics to provide:

At least one (1) non-commercial channel for public access for public, educational, religious, cultural, and governmental use for the City, other franchising entities, and other appropriate users of said channel in Jefferson County.

The above requirements do not require separate channels or a specific channel for the City--rather only, sufficient channel capacity to accommodate the minimal hourly requirements for access by the City and all other public, educational, governmental, and leased access users in the entire TKR system in Jefferson County.

Section 46(2) of the City's franchise states:

The Operator may review PEG usage every six (6) months, to evaluate the response and actual use of such channel. If, after any six (6) month period, the percentage of use for the required access channel drops below twenty-five percent (25%) of the total time allocated, then the required number of hours shall be reduced to a number that most closely approximates the average hours of use per day. If it is determined that the average hours of use per day for the required access channel is less than four (4) hours, then the requirement for that channel's availability shall cease, and Operator may use such channel for any lawful purpose.

Section 46(3) of the City's franchise states:

If, at any time, ninety percent (90%) of the total time allocated for any required access channel is consistently used five (5) days a week for a period of six (6) months, then Operator shall make available an additional access channel.

Section 46(4) of the City's franchise states:

Provided, however, that the total number of channels reserved for access by the Operator shall not exceed one (1) channel on the effective date of the Ordinance and three (3) channels thirty-six (36) months after the effective date of this Ordinance. Moreover, the Operator shall not be required to delete any channel(s) carried on Basic cable.

Section 46(5) of the City's franchise states:

Only the first showing of any program and only video programming should be counted for the purpose of determining the hours of channel usage.

Section 35 of the City's franchise contains the following requirements regarding emergency alerts:

Operator shall incorporate into its facilities the capability for an emergency override alert whereby Jefferson County or its designated agents, in times of crisis, may be able to introduce a bulletin on all channels throughout the County.

This emergency alert requirement provides an important avenue of communication with our residents in the event of an emergency.

Our franchise contains the following customer service obligations, by which we are able to help ensure that the cable operator is treating our residents in accordance with federal standards and the terms it agreed to in its franchise.

Section 13 addresses the general policy regarding notification of customers. Section 13 states as follows

- (1) In order to provide customers with the variety of information needed to make an informed decision, and to ensure that customers are notified of their, and the Operator's rights and responsibilities with respect to the system, Operator shall provide customers with a written "Notice of a Customer's and Operator's Rights and Responsibilities."
- (2) Unless expressly prohibited by the State, Operator may comply with the "Notice" requirements by providing said "Notice" through newspaper publication or over the cable system, on a channel clearly designated for the dissemination of such information -- (such a channel need not be solely designated for dissemination of such information, and may, in fact, be used at other times for any lawful purpose).

Section 14 addressed the minimum content of notification of customers. Section 14 states:

(1) At the time Operator is required to furnish a "Notice", such "Notice" should contain the following:

- a) an up-to-date listing of services provided;
- b) notification of a subscriber's ability to purchase or lease, from the Operator, parental control mechanism, or other device which will prohibit the viewing of a particular program service during a period selected by the subscriber;
- c) a listing and explanation of rates and charges, credit refund policy, connection and involuntary disconnection policies;
- d) the complaint resolution procedures;
- e) a listing and explanation of billing options available (such as monthly or yearly, and/or discounts for pre-payments);
- f) the customer service office hours and telephone number(s);
- g) the method of securing a voluntary disconnection; and
- h) the equipment use and return policy together with any required security deposits.

(2) The "Notice" shall be written in plain, simple understandable English.

(3) The "Notice" may be delivered to a subscriber via an insert in the subscriber's periodic invoice, through a special mailing, by newspaper or publication or over a channel clearly designated for the dissemination of such information.

Section 15 addresses billing practices and provides as follows:

(1) Whenever there is a change in Operator's billing practices or payment requirements, Operator shall notify subscribers within thirty (30) days of the effective date of such billing practices or payment requirements.

(2) In any case where a subscriber requests a cancellation or reduction of service within thirty (30) days after the notification of a scheduled rate or charge adjustment, then the subscriber's liability for the newly implemented rate or charge shall cease from the moment that the rate or charge adjustment becomes effective.

Section 16 addresses credits for service outages or interruptions and provides:

Operator shall, upon request by a subscriber, provide that subscriber with a pro-rata credit for a service outage or interruption exceeding two service days in duration, provided that the outage is not caused or is not a result of matters beyond the immediate control of Operator.

Section 17 addresses customer service performance. Section 71(1) contains the following definitions:

(a) Normal Business Hours

This means those hours during which most similar businesses in the community are open to serve customers. This will include some evening hours (at least one night per week) and/or some weekend hours.

(b) Normal Operating Conditions

This means conditions that are within the control of the operator. Those conditions which are not within the control of the operator include, but are not limited to, natural disasters, civil disturbances, power outages, telephone network outages, and severe weather. Those conditions which are ordinarily within the control of the operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the system.

(c) Service Interruption

This means the loss of picture or sound on one or more channels. This term affects the timing of when the operator must respond to a service problem.

Section 17(2) contains the following customer service standards:

(a) The operator will maintain a local, toll-free or collect call telephone access line which will be available to its subscribers 24 hours a day, seven days a week.

(1) Trained company representatives will be available to respond to customer telephone inquiries during normal business hours.

(2) After normal business hours, the access line may be answered by a service or an automated response system, including an answering machine. Inquiries received after normal business hours must be responded to by trained company representatives on the next business day.

(b) Under normal operating conditions, telephone answer time by a customer representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety percent (90%) of the time under normal operating conditions, measured on a quarterly basis.

(c) Under normal operating conditions, the customer will receive a busy signal less than three percent (3%) of the time.

(d) Customer service center and bill payment locations will be open at least during normal business hours and will be conveniently located.

Section 17(3) address installations, outages, and service calls and provides as follows:

Under normal operating conditions, each of the following five (5) standards will be met no less than ninety-five percent (95%) of the time measured on a quarterly basis.

(a) Standard installations will be performed within seven (7) business days after an order has been placed. "Standard" installations are those that are located up to 125 feet from the existing distribution system.

(b) Excluding conditions beyond the control of the operator, the cable operator will begin working on "service interruptions" promptly and in no event later than 24 hours after the interruption becomes known.

(c) The "appointment window" alternatives for installations, service calls, and other installation activities will be either a specific time or, at maximum, a four-hour time block during normal business hours. (The operator may schedule service calls and other installation activities outside of normal business hours for the express convenience of the customer.)

(d) The operator may not cancel an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(e) If a cable operator representative is running late for an appointment with a customer and will not be able to keep the appointment as scheduled, the customer will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenience for the customer.

Section 17(4) addresses communications between cable operator and cable subscribers and states as follows:

(a) Notifications to subscribers:

(1) The cable operator shall provide written information on each of the following areas at the time of installation of service, at least annually to all subscribers, and at any time upon request:

- (i) products and services offered;
- (ii) prices and options for programming services and conditions of subscription to programming and other services;
- (iii) installation and service maintenance policies;
- (iv) instructions on how to use the cable service;
- (v) channel positions of programming carried on the system; and

(vi) billing and complaint procedures, including the address and telephone number of the local franchise authority's cable office.

(2) Customers will be notified of any changes in rates, programming service or channel positions as soon as possible through announcements on the cable system and in writing. Notice must be given to subscribers a minimum of thirty (30) days in advance of such changes if the change is within the control of the cable operator. In addition, the cable operator shall notify subscribers thirty (30) days in advance of any significant changes in the other information required by the preceding paragraph.

(b) Billing:

(1) Bills will be clear, concise, and understandable. Bills must be fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills will also clearly delineate all activity during the billing period, including optional charges, rebates, and credits.

(2) In case of a billing dispute, the cable operator must respond to a written complaint from a subscriber within thirty (30) days.

(c) Refunds:

Refund checks will be issued promptly, but no later than either -

(1) in the customer's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or

(2) within thirty (30) days after return of equipment supplied by the cable operator.

(d) Credits:

Credits for service will be issued no later than the customer's next billing cycle following the determination that a credit is warranted.

Section 22 of the City's franchise addresses service requests, complaints, and response times and states:

(1) Except in times of a natural or man-made emergency, or an appointment scheduled with the mutual consent of a subscriber, or as provided for under "Service Interruptions," Operator shall respond to the service requests and complaints of subscribers within thirty-six (36) hours after the need for service becomes known. Moreover, except in emergency situations, Operator

shall inform the customer whether the service call is scheduled for the morning, afternoon, or evening hours. If the service call has to be canceled or rearranged, unless the subscriber decides otherwise, Operator shall make every effort to notify the customer as soon as possible, and to re-schedule the service call. Routine service calls are made in four (4) hour time blocks.

(2) Operator may rank order service calls in order of severity. Total outages will take precedence over area outages, area outages take precedence over a single home; and a multichannel problem takes precedence over a single channel problem.

Section 24 address new installations and re-connections and states as follows:

(1) During non-rush periods, new standard installations, promotional, short-term, or seasonal connections, re-connections, and upgrades of service by Operator shall be performed and completed within seven (7) days of a customer requesting such. A standard installation is one that is located one hundred twenty-five (125) feet from the existing distribution system. During rush periods new installations, promotional, short-term, or seasonal connections, re-connections, and upgrades of service by Operator shall be performed and completed within fourteen (14) days of a customer requesting such, if cable is built to the home.

(2) While Operator may charge a customer for installing, connecting, or re-connecting service, such charge must be explained to customers.

(3) In the case of a promotional or seasonal connection, any limitations, or restrictions should be explained prior to the promotional or seasonal connection.

(4) Operator may charge an appropriate re-connection charge or require a security deposit, in those instances where a customer is re-connected after an involuntary disconnection for non-payment or a prior history of unsatisfactory payment.

Section 32 of the City's franchise requires that the cable operator currently provide service to the following areas of the City:

(1) Operator shall extend service to any area within the City that has a density of twenty-five (25) home passings per aerial mile of cable, or thirty-five (35) home passings per underground mile of cable, or fractional equivalent thereof, as measured from the extremity of the trunk cable nearest the unserved area. Also, in such a case, a newly installed subscriber shall not be assessed or apportioned the cost for installation, except for the usual and normal connection fees paid by subscribers, so long as the system expansion is technically feasible.

(2) In areas below twenty-five (25) passings per aerial or thirty-five (35) passings per underground mile, homes may receive residential service if arrangements are made for cost-sharing of construction costs for service to that area. Operator shall use the following cost-sharing formula: Operator shall bear its pro-rata share of the then current cost per mile of plant construction based on a multiple of the actual number of potential residential subscribers per mile, divided by thirty-five (35) dwellings per mile for underground areas or twenty-five (25) dwellings per mile for aerial areas. Mileage will be measured from the nearest point on the nearest trunk line.

(3) Once the aforementioned density requirements are satisfied, the Operator shall be obligated to provide residential service to qualified areas within one hundred eighty (180) service days of a request. If construction is not completed within said one hundred eighty days (180) due to circumstances not under the control of Operator, Operator will not be in violation of this ordinance.

In order to ensure that our residents have access to current telecommunications technologies, our franchise contains the following rebuild or upgrade requirements in Section 45:

(1) The cable television distribution system will be built utilizing fiber optic technology with advanced electronic and passive equipment to provide a downstream pass band of 750 MHz and an upstream pass band of at least 30 MHz.

(2) The distribution system architecture will be a hybrid fiber optic/coaxial cable broadband network designed in a fiber-to-the-serving-area and modified super-distribution configuration. A master Head-End will provide the source of all signals for the franchise area. The master Head-End may be connected to serving areas directly or provide signal to local hubs which in turn would provide service to local serving areas. Fiber nodes will be deployed locally to increase reliability, improve signal quality, and divide the network into multiple serving areas.

(3) The Master Head-End and each hub location will utilize utility power for normal operations. A backup generator will be available in case of loss of utility power. Each node will be utility powered and may use battery back-up stand-by power supplies. The node electronics may be powered from the super-distribution/feeder network.

(4) The system will be designed with the ability to pass a combination of standard NTSC analog television signals and digital signals on the forward passband. The system will be capable of bi-directional operation.

Please be advised that our cable system was rebuilt in the past ten years and currently provides cable modem service to the same set of residents, which receive cable video services.

Section 10(1) of the City's franchise states contains the cable operator shall secure and maintain, for as long as it provides service to subscribers, public liability, property damage insurance, and umbrella coverage in at least the following amounts:

- (a) Public liability: \$1,000,000.00 per person/per occurrence;
- (b) Property damage: \$1,000,000.00 per any one (1) claim;
- (c) Umbrella liability: \$4,000,000.00 with up to a \$50,000.00 deductible and/or base insurance.

The cable franchise grants the cable operator access to the public rights of way and compatible easements for the purpose of providing cable television service. Apart from the franchise, the cable provider is not required to obtain a permit from the appropriate municipal office as well before it may access the public rights of way.

The franchise agreement provides for the following enforcement mechanisms by which we are able to ensure that the cable operator is abiding by its agreement. Section 12 of the franchise provides for audit and review of the franchise by the City as follows:

- (1) Operator shall keep complete and accurate books of accounts, and records of the business and operations under, and in connection with the system.
- (2) The City shall have the right to review at Operator's local office within Jefferson County all records, pertaining to the City's regulation of Operator's cable operations in the City, on seven (7) days written notice. Such review, unless mutually agreed upon, or judicially ordered, should occur within Operator's regular office hours.
- (3) The City shall have the right to hire, at its own expense, an independent certified public accountant, or other business or financial expert, to review the books and records of Operator. If, after a financial audit, it is determined that Operator has under paid amounts owed to the City (in excess of five percent (5%)), then the City may require Operator to reimburse the City for the actual cost of the audit. Provided however, absent fraud, all audits shall be binding on the City.
- (4) An intentional falsification of an entry into the books and/or records of Operator, made by Operator, of a material and substantial fact shall constitute a material violation of this ordinance. However, an erroneous entry, made in good faith, shall not constitute a violation of this ordinance.

- (5) Operator, at its local office within Jefferson County shall keep complete and accurate books and records of the key aspects of the system's operation in the City for at least the preceding three (3) years in such a manner that all matters pertaining to the City, can be easily produced and/or verified at the City's request. Also, Operator shall make available, on seven (7) days advance written notice, those records that pertain to its operation of the system that may be required by any other Federal or State agency having jurisdiction over cable operators. Provided, however, that with respect to the obligation to maintain financial records, Operator shall only be required to maintain the financial records required by Federal and State Law.

Additionally, Section 42 addresses default of the franchise, revocation, termination or cancellation of the franchise:

(1) In addition to all other rights and powers retained by the City under this Franchise Agreement, the City reserves the right to forfeit and terminate the franchise and all rights and privileges TKR in the event of a substantial breach of its terms and conditions. A substantial breach by TKR shall include, but shall not be limited to, the following:

- (a) An uncured violation of any material provision of this Franchise Agreement, or any material rule, order, regulation, or determination of the City made pursuant thereto;
- (b) Misrepresentation of any fact or condition material to the granting of this franchise renewal;
- (c) An attempt to evade any material provision of the Franchise or the practice of any fraud or deceit upon the City or its residents;
- (d) Failure to begin or substantially complete the system construction set forth in this Agreement within the timetables agreed upon;
- (e) Failure to provide surety and indemnity as required by the Agreement;
- (f) Failure to pay the franchise fees required by the Agreement;
- (g) The inability of TKR to pay its debts, insolvency or bankruptcy;
- (h) Transfer or assignment of this franchise without the City's consent;
- (i) An act or omission on the part of TKR which materially compromises its corporate character, or its legal, financial or technical integrity and/or stability of the system or TKR to such a degree that the interests of the subscribers are negatively affected

(2) None of the foregoing shall be considered a substantial breach if a violation occurs which is without fault of TKR or occurs as a result of circumstances beyond TKR's control.

(3) In the event of a substantial breach of this agreement, the City shall provide written notice to TKR. Such written notice shall state the nature of

the breach and the facts and circumstances upon which the City bases its assertion of a breach.

(4) Sixty days after TKR receives written notice of an alleged breach, if the City determines that TKR has not cured the breach or otherwise has not taken steps to satisfy the City, then the City may schedule a hearing on the matter, but no sooner than 30 days from the time the notice of the hearing is provided. At the hearing, TKR and any other interested party may present evidence and arguments concerning the breach.

(5) Following the public hearing, if the City finds that there is just cause to believe that there has been a substantial breach of this Agreement, and TKR has not cured that breach, the City may, by ordinance, declare the Franchise forfeited and terminated; provided, however, that the City may in its discretion give TKR an additional 30 days to provide written proof that it has cured the breach. Thereafter, if the City is not satisfied that TKR has cured the breach, it shall declare the franchise forfeited. Any ordinance declaring the franchise forfeited shall state the reasons for the City's determination that the franchise is forfeited.

(6) Unless the City takes steps to notify TKR within a reasonable time from when the City has actual notice of any problem or complaint that provides evidence of a substantial breach of this Agreement, evidence of that problem or complaint may not subsequently be used as evidence of a substantial breach.

The Franchising Process

In 1994, our city, along with approximately 26 other cities, formed the Jefferson County League of Cities Cable Commission ("JCLCCC") pursuant to the Interlocal Cooperation Act of Kentucky, KRS 65.210 to 65.300. The purpose of the JCLCCC is to jointly exercise all lawful powers authorized related to the provision, regulation, and control of cable television on behalf of the citizens of the member cities. In 1995, JCLCCC negotiated a model franchise with the cable operator, which was adopted by all of the member cities. This allowed the cable operator to quickly obtain franchises in these communities so as to be able to serve a large region.

Under the law, a cable franchise functions as a contract between the local government (operating as the local franchising authority) and the cable operator. Like other contracts, its terms are negotiated. Under the Federal Cable Act it is the statutory obligation of the local government to determine the community's cable-related needs and interests and to ensure that these are addressed in the franchising process – to the extent that is economically feasible. However derived

(whether requested by the local government or offered by the cable operator), once the franchise is approved by both parties the provisions in the franchise agreement function as contractual obligations upon both parties.

Section 7 of our franchise provides that changes in law which affect the rights or responsibilities of either party under this franchise agreement will be treated as follows:

In any case of an actual inconsistency between any provision or section of this ordinance, and any provision or section of a Federal or Kentucky rule, regulation, or law, then the Federal or Kentucky rule, regulation, or law shall not only supersede the effect of the ordinance, but also control in any local application.

Please noted, that in addition to federal law, Section 163 of the Kentucky Constitution, requires that cable operators must obtain franchises to use city or county streets for any purpose. It is significant to note that the debates of the Constitutional Convention indicate that the purpose of Section 163 "was to prevent the Legislature from authorizing the indiscriminate use of the streets of the city by public utilities without the city being able to control the decision as to what streets and what public ways were to be occupied by such utilities." Mt. Vernon Tel. Co, Inc. v City of Mt. Vernon, 230 S.W.2d 451, 453 (Ky. Ct. App. 1950). In Ray v. City of Owensboro, 415 S.W. 2d 77, 79 (Ky. Ct. App. 1967), the court also stated that the "purpose of the section was to give the city control of the streets, alleys and public grounds and to make it possible for the city to provide the services of these utilities to its inhabitants."

In City of Owensboro v. Top Vision Cable Co. of Ky., 487 S.W.2d 283, 286-87 (Ky. Ct. App. 1972), where Top Vision Cable claimed that Owensboro lacked the authority to require that local CATV operations obtain franchises, the Court reiterated the interpretation of Section 163 that was set forth in Ray. The court also rejected Top Vision's argument that the city could not issue franchises because the "cables and wires will be placed on poles and strung over public ways where existing utility companies have the right to operate by other franchises." City of Owensboro, 487 S.W. 2d at 287. The court stated, "under its general obligation to provide its citizens with safe, clean and unobstructed public ways, the presence of television cables, even in connection with existing utilities, would be an added burden on the city." Id. Thus, the court concluded that the city had the right to require a franchise because the presence of television cables would be an additional responsibility.

Competitive Cable Systems

In 2000, our community was approached by two competitive cable systems, Totalink of Kentucky, LLC and Knology, but the providers chose not to enter into any formal discussions. However, our city does have mechanisms in place to offer the same or a comparable franchise to a competitor upon request.

Conclusions

The local cable franchising process functions well in the City of Green Spring, KY. As the above information indicates, we are experienced at working with cable providers to both see that the needs of the local community are met and to ensure that the practical business needs of cable providers are taken into account.

Local cable franchising ensures that local cable operators are allowed access to the rights of way in a fair and evenhanded manner, that other users of the rights of way are not unduly inconvenienced, and that uses of the rights of way, including maintenance and upgrade of facilities, are undertaken in a manner which is in accordance with local requirements. Local cable franchising also ensures that our local community's specific needs are met and that local customers are protected.

Local franchises thus provide a means for local government to appropriately oversee the operations of cable service providers in the public interest, and to ensure compliance with applicable laws. There is no need to create a new Federal bureaucracy in Washington to handle matters of specifically local interest.

Finally, local franchises allow each community, including ours, to have a voice in how local cable systems will be implemented and what features (such as PEG access, institutional networks or local emergency alerts, etc.) will be available to meet local needs. These factors are equally present for new entrants as for existing users.

The City of Green Spring, KY therefore respectfully requests that the Commission do nothing to interfere with local government authority over franchising or to otherwise impair the operation of the local franchising process as set forth under existing Federal law with regard to either existing cable service providers or new entrants.

Respectfully submitted,

The City of Green Spring, Kentucky

*(Original signed and filed with the
City Clerk of Green Spring)*

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